



POLICE DEPARTMENT

October 1,, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Paul Casey
Tax Registry No. 933677
Midtown North Precinct
Disciplinary Case No. 84896/09

Police Officer John South
Tax Registry No. 934200
Midtown North Precinct
Disciplinary Case No. 84897/09

The above-named members of the Department appeared before the Court on August 6, 2010, charged with the following:

Disciplinary Case No. 84896/09

1. Police Officer Paul Casey, while assigned to the Midtown North Precinct, on or about October 2, 2007, at approximately 2230 hours, while on-duty, at or near West 47th Street, between 6th and 7th Avenues in New York County, operated a RMP that was involved in a motor vehicle accident with another vehicle and failed to request the response of a patrol supervisor of the precinct of occurrence, failed to remain at the scene for a patrol supervisor, and failed to obtain the name, address, home and business telephone numbers of the person involved, as required. *(As amended)*

P.G. 217-06, Page 1, Paragraph 3 – DEPARTMENT VEHICLE ACCIDENTS
VEHICLE ACCIDENTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 Police Officer Paul Casey, while assigned to the Midtown North Precinct, on or about October 2, 2007, at approximately 2230 hours, while on-duty, at or near West 47th Street, between 6th and 7th Avenues in New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer Paul Casey, while operating a RMP activated the turret lights and siren without police necessity *(As amended)*

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

5 Police Officer Paul Casey, while assigned to the Midtown North Precinct, on or about October 2, 2007, at approximately 2230 hours, while on-duty, at or near West 47th Street, between 6th and 7th Avenues in New York County, operated a RMP that was involved in a motor vehicle accident with another vehicle and failed to complete a Report of Motor Vehicle Accident (MV 104), as required *(As amended)*

P G 217-06, Page 1, Paragraph 4 – DEPARTMENT VEHICLE ACCIDENTS
VEHICLE ACCIDENTS

Disciplinary Case No 84897/09

1 Police Officer John South, while assigned to the Midtown North Precinct, on or about October 2, 2007, at approximately 2230 hours, while on-duty, at or near West 47th Street, between 6th and 7th Avenues in New York County, was the recorder in a RMP that was involved in a motor vehicle accident with another vehicle and failed to request the response of a patrol supervisor of the precinct of occurrence, failed to remain at the scene for a patrol supervisor, and

failed to obtain the name, address, home and business telephone numbers of the person involved, as required *(As amended)*

P G 217-06, Page 1, Paragraph 3 – DEPARTMENT VEHICLE ACCIDENTS
VEHICLE ACCIDENTS

[REDACTED]

[REDACTED]

3 Said Police Officer John South, while assigned to the Midtown North Precinct, on or about October 2, 2007, at about 2230 hours, while on-duty, at or about West 47th Street, between 6th and 7th Avenues, New York County, having been involved in a motor vehicle accident, an unusual occurrence, involving a Department vehicle in which said Police Officer was the assigned recorder, wrongfully did fail and neglect to make entries regarding said event in his Activity Log (PD112-145), as required *(As amended)*

P G 212-08, Page 1, Paragraph 2 – ACTIVITY LOGS
COMMAND OPERATIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ In Disciplinary Case No. 84897/09, Charges and Specification numbered 4 refers to Police Officer John South and it was dismissed by the Department Advocate's Office during the hearing

6 Police Officer John South, while assigned to the Midtown North Precinct, on or about October 2, 2007, at about 2230 hours, while on-duty, at or near West 47th Street, between 6th and 7th Avenues in New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that Police Officer John South, while the recorder in an RMP activated the turret lights and siren without police necessity (*As amended*)

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Scott Rosenberg, Esq , Department Advocate's Office, and the Respondents were represented by Michael Martinez, Esq

The Respondents, through their counsel, entered a plea of Guilty to the subject charges
A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondents, having pleaded Guilty, are found Guilty as charged Specification Nos 2 & 3 against Respondent Casey and Specification No 2 against Respondent South were dismissed before the hearing Specification Nos 4 & 5 against Respondent South were dismissed at the hearing

SUMMARY OF EVIDENCE IN MITIGATION

The Respondents both testified on their own behalf

Respondent South

Respondent South was a seven-year member of the Department assigned to the Midtown North Precinct (MTN). For about two years, as an Impact officer, he was assigned to the Midtown South Precinct (MTS). He had worked patrol with Respondent Casey on the 4x12 tour for 3 ½ to 4 years in MTN. They "always had very strong activity," for both arrests and summonses.

Respondent South testified that on October 2, 2007, he and Respondent Casey were working patrol on the 4x12 tour in a marked radio motor patrol vehicle (RMP). Respondent Casey was the operator and Respondent South was the recorder. They were in uniform. Around 2230 hours, they were in heavy traffic on 47th Street, heading west toward Seventh Avenue, in the Times Square area. There were pedestrians "walking all over," and also vendors. The traffic light had cycled several times but no vehicles were moving. "[A]t that point sitting in a marked RMP other cars looking at you like let[']s do something about this."

Respondent South testified that "the turret lights were put on," in order to get people's attention and move "some of the other peddlers and everything like that out of the area and clear up the traffic condition." He was unsure whether it was he or his partner that turned on the turrets.

Respondent South testified that as they proceeded, a vehicle "came very close to us and there was definitely some contact." He felt "like a little bit of a bump," but was unsure of whether the front bumper or the side of the RMP was hit. Respondent South stated that the other driver was to the right of the RMP, although he stated that he did not exit the RMP because there were vehicles passing on his right.

One of the Respondents waved the other driver over Respondent Casey got out and spoke to her for less than 30 seconds He came back and told Respondent South that the other driver was unhurt and did not want to prepare an accident report The officers left the scene

Respondent South answered "absolutely not" to the question of whether he recalled hearing his partner tell the other driver that they were responding to a robbery They were not on their way to a robbery or anything similar

Respondent South admitted that neither he nor his partner called a supervisor to the scene He agreed that the proper procedure was that in any accident, no matter how small, a supervisor must be called to the scene and an accident report must be filled out He asserted that they had no "malicious intent," but made an error in judgment Their thinking was "we could go and handle some other jobs " They and the supervisor would "have been tied up for the remainder of the tour " Respondent South testified that the Department's auto insurance covered an officer involved in an on-duty car accident, and his personal insurance carrier would not be notified² He did not believe anyone was injured or that there was "extensive damage" to either vehicle He asserted that "we wouldn't have been in any trouble at all" if they had filled out an accident report

Seven or eight months later, Respondent South testified, the MTN integrity control officer, Lieutenant Stedina, notified him and Respondent Casey that he needed their memo books (Activity Logs) for October 2, 2007 They conferred with each other to figure out why Respondent Casey had written in his memo book that "he was in an accident and no damage to RMP and no injuries "

² See Patrol Guide § 217-06, p 9, para 2 et seq (stating that New York State insurance regulations prohibit Department member's private insurance carrier from penalizing him as a result of an on-duty Department vehicle accident, and detailing procedure if a penalty is imposed)

Respondent South testified that six months to a year after "it was first brought to [his] attention that there was an allegation," he was assigned to anti-crime. Respondent Casey had already been sent to anti-crime. They got "very good" results there. They caught some pickpockets and closed out several cell phone robbery patterns. In one case, they responded to a burglary-in-progress call in Hell's Kitchen where the caller said that someone was trying to break into his window. The officers did a canvass and found someone that "vaguely fit the description," but was also looking at a window through a fire escape. Respondent South got out of their disguised taxicab and pretended to be "just a pedestrian on the street hanging out." The perpetrator took a swing at Respondent South and tried to rob him. The Respondents arrested the perpetrator and did a show-up identification with the 911 caller, "and he was indeed the guy who was trying to break into the building." He was wanted for other area burglaries as well.

On cross-examination, Respondent South testified that he or his partner activated the siren as well as the turret lights. They did not do so "simply to get through heavy traffic," but "to clear the traffic for other motorists that were around us as well." He believed that the traffic was being caused mostly by pedestrians, possibly tourists, crossing against the light or outside the crosswalk. One or two cars were double-parked. Respondent South stated that taking enforcement action against those vehicles would have created even worse traffic. He asserted that they also turned on the turret lights to try and get those cars to move. Two or three lights had passed with no vehicular movement.

There were vendors on the sidewalk who Respondent South believed were operating without a vendor's license or tax stamp. This "creates heavy pedestrians mulling around," sometimes blocking the crosswalks if the vendors were on the corners. There were not enough

personnel to arrest all the vendors, so "to scare them off [they] will put the sirens and lights on "

If the crosswalk was blocked, people would walk in the middle of the street

Respondent South was unsure if the other motorist was moving when they made contact, but she was not parked. They were about five cars back from the traffic signal. Respondent South did not recall if the light was green or red when they struck. He believed they were both trying to get through the light. He asserted that he was unaware of the extent of the damage.

Respondent Casey

Respondent Casey had been a member of the Department for approximately six and a half years, with perhaps five of those years at MTN. Prior to that, he did "field training" at MTS. He always had good activity while assigned to patrol at MTN. After the incident in question occurred, he was assigned to anti-crime.

On October 2, 2007, Respondent Casey was the operator. He and his partner were in uniform. Prior to the impact with the other vehicle, they were in gridlock conditions on 47th Street heading toward Seventh Avenue. The traffic signal had cycled multiple times without any cars making it through. "When that happens other motorists start to look at you like can you do something, do your job "

Respondent Casey turned on "my lights ". He also beeped the horn or pressed a button, which activated the "whoop" sound. The traffic signal was green when he did this, he contended that he "would never do that" had the light been red because vehicles "could get struck by oncoming traffic and that is a dangerous situation ". Respondent Casey usually activated the "whoop" feature when "people are doing what they shouldn't be doing on the sidewalk, they look at you and they take off "

When the impact occurred, the Respondents and the other motorist were about 100 feet from the intersection. They were both "snaking through traffic" at five miles per hour at most when they "rubbed together." Respondent Casey pulled over and got out of his vehicle. He believed he saw white paint on the other car and red paint on his, he had noted in his memo book that the other car was red. The other motorist was calm. There was a male passenger, possibly her boyfriend or husband, in the passenger seat.

Respondent Casey believed he asked the motorist if she was all right, even though he "knew she was okay that is just a question as a police officer you ask just to make sure everything is okay." He "asked her if she wanted to get out take a look, I believe we just exchanged paint." She declined. Respondent Casey denied telling her that he was on the way to a robbery call.

Respondent Casey was out of the vehicle for less than a minute. He and his partner continued trying to clear the intersection. Respondent Casey made a memo book entry at the scene or shortly thereafter, but on the same day at the latest. The entry for 2220 hours read "rubbed bumper of red 2DSD [two-door sedan] w/RMP no injuries, no damage to RMP."

Respondent Casey admitted that he did not fill out an auto vehicle accident report. He was supposed to notify a supervisor. Either the supervisor or Respondent Casey would fill out the report. This was true whether the motorist insisted on it or not.

Respondent Casey testified that he did not notify a supervisor, but should have. He failed to do so because he "thought it was so extremely minor that" he "made that last that split second decision on my own. I made a decision on my feet and that's why I am here." Respondent Casey did not think his partner understood what was even going on until they left, as he did not exit the car and was doing paperwork.

On cross-examination, Respondent Casey asserted that he did not recall whether the other motorist (whom the Advocate identified as [REDACTED]) moved to the right as the RMP's turret lights were on. He testified that they were both moving very slowly but did not know if she was moving out of the way for the RMP. He admitted that it was possible Respondent Casey believed [REDACTED] was to his right, but did not recall where the contact was.

Respondent Casey denied that he turned on the turrets and siren to get through traffic, as opposed to correcting the traffic condition. They did not issue any summonses, even though they were authorized to do so. Respondent Casey did not believe he used the microphone. He did not believe that he and his partner were on their way to an assignment. They left the scene after speaking with the driver. The turret lights were still on.

Respondent Casey admitted that he failed to get the name of the other motorist or her address, or her passenger's name.

Respondent Casey insisted that the RMP "just rub[bed] the bumper" of [REDACTED]'s vehicle. He conceded that photographs of her vehicle showed that he may have hit her quarter panel. Respondent Casey believed that either the RMP's rear fender, rear door or rear quarter panel, on the right side, made contact with Saverese's car.

Upon questioning by the Court, Respondent Casey testified that "we were sitting in traffic and I bumped that is what happens in midtown traffic." He approximated that [REDACTED] was in her 20s, as was the passenger. At his official Department interview, the investigator told him that [REDACTED]'s vehicle had [REDACTED] license plates.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v Board of Education, 34 N Y 2d 222 (1974). Respondent Casey was appointed to the Department on January 20, 2004. Respondent South was appointed to the Department on July 1, 2002. Information from their personnel files that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

The Respondents have pleaded Guilty to a variety of offenses relating to the failure to respond appropriately to and report a minor on-duty vehicular accident. On October 2, 2007, at approximately 2230 hours, the Respondents were on patrol in the Midtown North precinct, traveling in an RMP west on West 47th Street between Sixth (Avenue of the Americas) and Seventh Avenues. This was post-theatre Times Square on an autumn night. There was heavy vehicular traffic and the cars were moving very slowly, if at all. Also, there were many meandering tourists crossing 47th Street at the intersection without the right of way. There were also people crowded around illegally-operating sidewalk vendors. The Respondents were in an RMP. They testified that they wanted to get the traffic moving both for themselves and for other motorists.

Respondent Casey, the operator, testified that he turned on the turret lights and activated the "whoop" sound feature. The RMP made contact at a very slow speed with the vehicle of a civilian, identified by the Advocate as [REDACTED]. Respondent Casey believed that the right rear of the RMP hit [REDACTED]'s car. Respondent Casey got out and spoke to [REDACTED]. After he ascertained that neither [REDACTED] nor her passenger was injured, Respondent Casey and Saverese agreed to continue on their way. The Respondents did not notify a patrol supervisor, fill out the required reports, or obtain [REDACTED]'s contact information. Respondent Casey did,

however, note the accident in his Activity Log, stating that he "rubbed" the bumper of the other car, but there were no injuries and no damage to the RMP

Respondent Casey maintained that the traffic light was green when he activated the RMP's signals. The Advocate claimed that [REDACTED] told investigators that the light was red when this occurred. The Advocate also asserted that Respondent Casey told [REDACTED] that he was responding to a robbery and could not stop to exchange paperwork. [REDACTED], however, did not testify at this mitigation hearing and no statements by her were admitted into evidence.

The Respondents maintained that their failure to act was not out of laziness, fear of discipline for being in the accident, personal auto insurance consequences, or a desire to cover it up. In essence, they wanted their RMP to be in motion so they could be on patrol somewhere other than standing in traffic. Once the accident occurred, they did not want to get bogged down in paperwork and supervisor notifications.

This case is a vivid example of why officers must stop and document all vehicle accidents, no matter how minor they may appear at the time. The officers were not required to fill out paperwork to "cover themselves," but to document an accident between a civilian's car and a Department vehicle. The damage to [REDACTED]'s car may have been worse than Respondent Casey honestly believed. A patrol supervisor would also be able to determine whether Respondent Casey was operating the RMP safely. While [REDACTED], according to the Respondents, was content to go on her way, she was not the registered owner of the vehicle. Because the officers did not get her information, they did not know this. Moreover, the actual owner – her father – was less contented with the situation, and wanted to report the incident to his insurance carrier and have [REDACTED] fill out an accident report. When Department investigators looked into this, they could find no record of it. This could only have led to the

belief on the investigators' part, not to mention that of the civilians involved, that Department officers had arrogantly covered up a motor vehicle accident. In fact, the Respondents did not cover up the accident, Respondent Casey made an entry in his memo book. The Respondents simply believed the accident not important enough to report in light of their desire to fulfill their patrol duties.

The Department recommended a penalty of 20 vacation days for each Respondent. The Respondents' counsel suggested a penalty of 5 vacation days at most, pointing out that their motivation was not to hide the incident but to get back to patrol instead of being tied up with an exceedingly minor vehicular accident. Counsel also noted that the Respondents were active and dedicated police officers, and that they were assigned to anti-crime after this incident became known to the Department.

In *Case Nos. 80935 & 80936/05*, signed July 5, 2006, two members forfeited 15 vacation days each for failure to report an on-duty motor vehicle accident with a bicycle rider. They heard a "banging noise" and were informed by the angry cyclist moments later that he had been struck by their RMP. The officers did not consider the incident to constitute a motor vehicle accident because they did not see any actual damage to the RMP or the bicycle, and the civilian did not appear to be injured. The trial commissioner noted that the cyclist could have had internal injuries not noticeable at the scene. Further, because the accident was not documented, the cyclist could have blamed the officers for injuries sustained in some subsequent incident.

In the instant case, the Court finds that a lesser penalty is warranted. The accident occurred with relatively little force, so any serious injury was unlikely. The Respondents both are active officers with good records and have since been assigned to anti-crime teams. As such, the Court recommends that a penalty of 10 vacation days be imposed upon each Respondent. See Case No. 83259/07, signed Nov. 18, 2009 (sergeant forfeited 10 vacation days where two of his officers stopped an individual for suspected drug possession, and recovered cash, after individual was released when substance turned out to be religious amulet, sergeant failed to ensure that a field test report and property voucher were filled out, that desk officer was informed, and that command log entry was made).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
FEB 15 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER PAUL CASEY
TAX REGISTRY NO 933677
DISCIPLINARY CASE NO 84896/09

The Respondent has received an overall rating of 4.0 "Highly Competent" on his last three annual performance evaluations [REDACTED]
[REDACTED] He has no prior formal disciplinary record

For your consideration



David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHN SOUTH
TAX REGISTRY NO 934200
DISCIPLINARY CASE NO 84897/09

In 2007 and 2009, the Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 4.5 "Extremely Competent/Highly Competent" in 2008. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration



David S. Weisel
Assistant Deputy Commissioner – Trials